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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/764,783

01/23/2004

Scott F. Watson

54317-048500

9741

46560 7590 03/10/2009

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EXAMINER

WANG, LIANG CHE A

ART UNIT

PAPER NUMBER

2453

MAIL DATE

DELIVERY MODE

03/10/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |   |  |
|------------------------------|--------------------------------------|---|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/764,783 | <b>Applicant(s)</b><br>WATSON, SCOTT F. |  |
|                              | <b>Examiner</b><br>Liangche A. Wang  | <b>Art Unit</b><br>2453                 |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 91-129 is/are pending in the application.
- 4a) Of the above claim(s) 126-129 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 91-125 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/4/09</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Claims 91-125 are presented for examination.
2. Claims 126-129 are withdrawn.
3. IDS filed on 2/4/09 is considered.

### ***Response to Arguments***

4. Applicant's arguments filed 1/16/09, have been fully considered but they are not persuasive.
  - a. Applicant provided new claims 91-125, and updated rejection is provided.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 91-125 are rejected under 35 U.S.C. 102(e) as being anticipated by Dwek, US Patent Number 6,248,946, hereinafter Dwek.
7. Referring to claim 91, Dwek teaches a method (Col 4 lines 18-21) of providing data that is available on one or more data stores (Song File Servers 116) to a client device (client 130, Figure 1, Col 3 lines 44-49) comprising the steps of:

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- a. providing a user interface (user interface 250, figure 2) associated with the client device (client 130) to enable the user to specify user desired data (Col 4 lines 35-38, user selection)
  - b. fetching the specified user desired data (Col 4 lines 63-65, locating music file) that is available on one or more of the data stores via a plugin module (figure 1, Col 4 lines 25-59, songs stores on online music database 114, song file servers 116 are available for users of computers 130 to select, the application that causes the song selections is the plugin module);
  - c. aggregating the fetched user desired data into a media stream (Col 5 lines 21-24, song files are formatted into a streaming compressed song file);
  - d. provide the media stream to the client device (Col 4 lines 65-67, returning back to user, and Col 5 lines 31-33).
8. Referring to claim 92, Dwek teaches the method of claim 91, wherein the user desired data comprises a list of data elements (music selections and the selected song files are viewed as the list of data elements, Col 4 lines 44-52).
9. Referring to claim 93, Dwek teaches the method of claim 92, wherein individual data elements contained in the list of data elements are located at diverse locations on one or more of the data stores ((figure 1, Col 4 lines 25-59, songs stores on online music database 114, song file servers 116 are available for users of computers 130 to select song files).
10. Referring to claim 94, Dwek teaches the method of claim 92, wherein the step of aggregating the fetched user desired data into a media stream further comprises:

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concatenating the list of data elements to create the media stream (Col 5 lines 21-24, song files are formatted into a streaming compressed song file).

11. Referring to claim 95, Dwek teaches the method of claim 91, wherein the user interface provides categories of data (figure 3A).
12. Referring to claim 96, Dwek teaches the method of claim 95, wherein the categories of data include music categories (figure 3A).
13. Referring to claim 97, Dwek teaches the method of claim 95, wherein the categories of data include news categories (Col 12 lines 15-22, new recording release corresponds to news categories).
14. Referring to claim 98, Dwek teaches the method of claim 91, wherein the desired data comprises one or more music files that are played with a media player (Col 8 lines 19-26, songs are played by user's music player).
15. Referring to claim 99, Dwek teaches the method of claim 98, further comprising providing a music controller (Col 2 lines 16-26, figure 3A).
16. Referring to claim 100, Dwek teaches the method of claim 98, wherein the user interface enables a user to create music filters (Col 2 lines 16-23).
17. Referring to claim 101, Dwek teaches the method of claim 100, wherein a music filter comprises data on how frequently a music file is to be played (Col 2 lines 16-23, play frequency).
18. Referring to claim 102, Dwek teaches the method of claim 100, wherein the user interface enables a user to create a custom station (Col 9 lines 18-30, figure 3B).

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19. Referring to claim 103, Dwek teaches the method of claim 102, wherein the user interface enables a user to share the custom station with another user (Col 9 lines 32-45).
20. Referring to claims 104-125 claims 104-125 encompass the same scope of the invention as that of the claims 91-103. Therefore, claims 104-125 are rejected on the same ground as the claims 91-103.

### ***Conclusion***

21. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Liangche A. Wang whose telephone number is (571)272-3992. The examiner can normally be reached on Monday thru Friday, 8:30 am to 5:00 pm.

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23. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571)272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
24. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Liang-che Alex Wang  
March 4, 2009

/Liangche A. Wang/  
Primary Examiner, Art Unit 2453